

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

In the Matter of Carroll J. Evers, Petitioner v. Fillmore Township, Respondent	ORDER
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On March 31, 2008, the Department of Veterans Affairs received a Petition for Relief under the Veterans Preference Act filed on behalf of Carroll J. Evers, Petitioner. On April 9, 2008 the Department issued a Notice of Petition and Order for Hearing scheduling a hearing in this matter before the undersigned Administrative Law Judge beginning at 10:00 a.m. on June 12, 2008 in the Commissioners Board Room, Fillmore County Courthouse, 101 Fillmore Street, Preston, Minnesota 55965.

Dwight D. Luhmann, Attorney at Law, 209 St. Paul Street SW, PO Box 257, Preston, MN 55965, represents the Petitioner Carroll J. Evers. Jeff M. Zalasky, Attorney at Law, 9321 Ensign Avenue South, Bloomington, MN 55438 represents the Respondent, Fillmore Township.

On May 19, 2008 the Respondent filed a motion for a continuance of the hearing or, alternatively, for an order allowing a certain witness's testimony to be taken by deposition to preserve testimony. The basis of the motion is the unavailability of that witness on the day of the hearing. On May 20, 2008 the Petitioner filed a response to the motion that opposed allowing the witness' testimony to be presented by deposition.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the Memorandum that follows,

IT IS HEREBY ORDERED:

1. That the Respondent's motion for a continuance is DENIED; and
2. That the Respondent's motion to take the deposition of witness Troy Erding to preserve testimony is GRANTED. The deposition must be taken in the manner prescribed by law for depositions in civil actions.

Dated: May 22, 2008

s/Scott J. Newman

SCOTT J. NEWMAN
Administrative Law Judge

MEMORANDUM

Minn. R. 1400.7500 specifically allows a hearing to be continued upon showing of "good cause." Although the rule states that good cause shall not include unavailability of a witness if the witness's testimony can be taken by deposition," the Respondent's motion alternatively requests leave to take Mr. Erding's testimony by deposition to preserve testimony. Minn. R. 1400.6900 allows for and provides the manner in which a witness's deposition may be taken for that purpose, and the Petitioner has failed to show a compelling reason for not allowing the witness' testimony to be presented by deposition.

S. J. N.